IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 188 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHBHAI SHANKARBHAI SONARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 188 of 2002

MR MAHESH BHAVSAR for Petitioner No. 1

MR AY KOGJE Ld. APP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/06/2002

ORAL JUDGEMENT

The petitioner by invoking the jurisdiction of this court under Articles 226 and 227 of the Constitution of India, has challenged the legality and validity of the

order of externment passed by the Sub Divisional Magistrate, Dholka in Externment Case No. 48 of 2001 vide order dated 17.9.2001. It is pleaded that this externment order has been confirmed by the Appellate Authority namely the Deputy Secretary (Home), Sachivalaya, Gandhinagar while dealing with the appeal. Both these orders are assailed by the petitioner.

It is pointed out by the learned counsel that on account of two different Criminal Cases registered with Bavla Police Station and other two different chapter cases which were registered because of those criminal cases and so far as the present petitioner is concerned, one another chapter case bearing No. 41 of 2001 registered on the strength of the complaint of PSI, Bavla Police Station under sec. 107 of CrPC, externment proceedings were initiated. The petitioner was apprehended under sec. 151 of CrPC also during the proceedings of Chapter Case No. 41 of 2001.

The notice to show cause Annexure-A, indicates that the petitioner was asked to execute sureties at the end of the proceedings and it is not reflected in the notice that the petitioner had violated any of the conditions of the surety bond executed in compliance of the order passed in the chapter case. The allegations made in the notice to show cause, on plain reading are found vague and very general in nature. On account of registration of two different criminal cases; (i) u/s. 326, 323, 324, 504, 506(2) and 114 of IPC and u/s. 135 of Bombay POlice Act and (ii) u/s. 323, 504, 506(2) & 114of IPS which were pending on the date of issuance of show cause notice, the harsh action of externment whether required to be taken was the question before the Sub Divisional Magistrate and he has failed in appreciating the totality of facts available on record. It seems that he has not exercised the jurisdiction in the letter and spirit of the provision. It is rightly submitted by the learned counsel for the petitioner that the order of externment is bad on three main grounds; firstly, that the notice to show cause is vague and the same is issued without proper application of mind; secondly, as such there are no five criminal antecedents and only two criminal cases were registered with the Bavla Police Station and but for that criminal cases, the police instituted, by way of abandoned caution, two chapter cases and when the petitioner had co-operated in those proceedings, the jurisdiction could not have been exercised. It is also submitted that this is a case of improper exercise of jurisdiction, and the third point

raised is that even for the sake of argument, if it is accepted that the petitioner is required to be externed from particular area than the authority is supposed to consider the relevant areas from which area or areas he should be externed. After all the order of externment adversely affects the personal liberty and it regulates the movement of a free citizen. As such the ld. Sub Divisional Magistrate has not assigned any reasons as to why he requires to extern the petitioner from entire district of Ahmedabad and other adjoining districts merely because he is an accused of two criminal cases registered at Bavla Police Station. This so-called offending acts are committed at a village in Bavla Taluka.

During the course of oral submission, Mr. Kogje learned App while replying the query raised by the Court has submitted that the ratio of the decision in the case of Jagdish Makwana vs. Sub Divisional Magistrate, Bhavnagar reported in 2000(2) GLR p. 1158 can be applied in this case and the order of externment can be modified accordingly and he should be externed from district Ahmedabad only.

In the present case, no incident or offence committed by the petitioner in the adjoining districts is reported. It is neither reflected in the notice of show cause or in the order under challenge. The fact of the present case are clear and it does not indicate that it was necessary to pass order of externment in the present case.

Mr. Bhavsar learned counsel for the petitioner has pointed out that because of the two criminal cases referred in the notice to show cause registered with the Bavla Police Station, the police officer of the Bavla Police Station had prepared relevant papers to initiate externment proceedings before the Sub Divisional Magistrate against three different persons and all the three persons belonged to one family. Zerox copies of the orders confirming the externment orders passed against two other persons by the Deputy Secretary (Home) Sachivalaya, Gandhinagar are tendered today during the course of oral submission and the same are taken on record. The number of externment case decided by the Sub Divisional Magistrate Dholka vide decision dated 19.9.2001 reflected in the decision of the Appellate Authority are significant. One is Externment Case No. 47 of 2001 and the second one is Externment Case No. 49 of 2001. It is submitted that this Court while dealing with the Special Criminal Application No. 207 of 2002

has turned down the externment order passed by the Sub Divisional Magistrate on 5.1.2001 and confirming order dated 17.9.2001. Zerox copy of the decision has been tendered by the learned counsel for the petitioner is taken on record. On similar set of facts, when this Court has turned down the externment order on merits, the orders under challenge cannot sustain because there are no other independent grounds or reasons to confirm the finding recorded by both these authorities. The externment orders passed in Externment Case No. 49 of 2001 has been turned down by the above said decision. The present petition is filed challenging the decision in Externment Case No. 48 of 2001 and I am told that other Special Criminal Application challenging the orders passed in Externment Case No. 47 of 2001 is pending. This Court does not think it proper, on the set of facts available on record to extern the petitioner even from the district Ahmedabad. The petitioner has been granted bail by the competent court and there is no allegation that he has even violated any of the conditions of bail granted.

The jurisdiction vested with the authority- Sub Divisional Magistrate should be exercised sparingly and only when it is found that one requires to be externed from the area as a preventive measures. It is difficult to accept that the petitioner falls in the category of a person who can be said to be a "person about to commit the offence." It seems that the Sub Divisional Magistrate has passed the order without proper application of mind. The order of confirmation passed by the Deputy Secretary (Home) is passed mechanically and with a very casual approach. So, both the orders shall have to be turned down. I agree that the Deputy Secretary (Home) if is in agreement with the reasons recorded by the Sub Divisional Magistrate, he is not supposed to assign his own reasons, means cause for externment or his independent satisfaction. Reasoned order may not be warranted but at the same time the disposal of the appeal preferred under sec. 60 of the Bombay Police Act has to be decided by the authority objectively as the authority at the relevant point of time is exercising the quasi judicial powers.

For short, this petition is allowed. The order of externment passed by the Sub Divisional Magistrate dated 17.9.2001 and confirmed by the Deputy Secretary (Home), Sachivalaya, Gandhinagar are quashed and set aside. Rule made absolute accordingly. DS Permitted.

(C.K. BUCH, J.)

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